# BEFORE THE BOARD OF PATENT APPEALS
# AND INTERFERENCES

Paper No. 11

Application Number: 09/092,791
Filing Date: June 05, 1998
Appellant(s): EICHSTAEDT ET AL.

**MAILED**

APR 1 0 2001

Technology Center 2100

George H. Gates
For Appellant

**EXAMINER'S ANSWER**

This is in response to appellant's brief on appeal filed January 30, 2001.

## (1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

## (2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

## (3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

## (4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on November 2, 2001 has been entered.

## (5) *Summary of Invention*

The summary of invention contained in the brief is correct.

## (6)  *Issues*

The appellant's statement of the issues in the brief is correct.

## (7)  *Grouping of Claims*

The rejection of claims 1-13 and 15-39 stand or fall together because appellant's brief

does not include a statement that this grouping of claims does not stand or fall together and

reasons in support thereof.  See 37 CFR 1.192(c)(7).

## (8)  *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

## (9)  *Prior Art of Record*

| | | |
|---|---|---|
| 5,572,643 | JUDSON | 11-1996 |
| 5,864,611 | CHING et al. | 1-1999 |

"Proactive Universal Resource Locators Lookup in Internet Web Browsers", IBM Technical

Disclosure Bulletin, vol. 40, no. 9 (Sept 1997), pp. 113-114

## (10)  *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-13 and 15-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Judson, US Pat. No. 5,572,643 (hereafter referred to as Judson) in view of "Proactive Universal

Resource Locators Lookup in Internet Web Browsers", IBM Technical Disclosure Bulletin, vol.

40, no. 9, September 1997, pp. 113-114; TDB0997.0041 (hereafter referred to as TDB) and further in view of Ching et al., US Pat. No. 5,864,611.

As to claims 1, 15 and 27, Judson discloses the invention substantially as claimed. Judson discloses a method and apparatus for alleviating problems associated with delays in accessing data on network (Judson, col. 1, line 13 – col. 2, line 53), comprising the steps of:

a) accessing data on a network from a client computer (a client connected to a server through a network [Judson, client/server network depicted in fig. 1] accesses web pages using web browsers [Judson, fig. 2, element 62]; Judson, col. 1, line 13 – col. 2, line 53);

c) presenting filler contents on the client computer…, wherein the filler contents are customized to a user's taste (latency-filler contents, customized on user interest, are displayed during web page access; Judson, col. 5, line 50 – col. 6, line 24 and col. 7, lines 2-17).

However, Judson does not specifically disclose step b) identifying when a delay occurs….

In the same field of endeavor, TDB teaches a system which identifies possible problems associated with accessing web pages in order to alleviate problems associated with delays in web page access (TDB, pages 1-2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of identifying access delays as taught by TDB into the system of Judson in order to increase the efficiency of the system by selectively displaying filler contents to only those links with high latency times.

Judson-TDB does not specifically disclose identifying a **sufficient** delay in the network. Ching teaches detecting network delays to a specific threshold (Ching, abstract and col. 1, line 5 – col. 2, line 52).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the detecting a sufficient delay as taught by Ching into the system of Judson-TDB for the purpose of further increasing the efficiency of the system by enabling detection of the amount of delay and applying the filler data accordingly.

As per claims 2, 5-7, 9-10, 28, 31-33 and 35-36, Judson-TDB-Ching discloses filler contents which can be automatically pre-selected from user interests obtained by web access history or from the accessed web page (Judson, col. 6, line 62 – col. 7, line 17).

As per claims 3, 4, 29 and 30, Judson-TDB-Ching discloses filler contents selected from a group comprising text, graphics, audio, and audiovisual data. The filler data can be of any type of web content, static or dynamic (Judson, col. 6, line 25 – col. 7, line 17).

As per claims 8, 18, 19, and 34, Judson-TDB-Ching discloses retrieving and storing the filler object on the client (Judson, col. 5, lines 16 – col. 6, line 11).

As per claims 11 and 37, Judson-TDB-Ching discloses that the client computer identifies latency (TDB, page 1).

As per claims 12, 13, 24, 25, 38 and 39, Judson-TDB-Ching discloses displaying the filler while the original web page is downloaded and deactivates the filler when downloading is complete (Judson, col. 5, line 50 – col. 6, line 12).

As per claim 16, Judson-TDB-Ching discloses a browser for retrieving the embedded filler content from a server (Judson, col. 6, line 62 – col. 7, line 17).

As per claim 17, Judson-TDB-Ching discloses the browser (enabled to be filler engine/filler content receiver) request and reception of the filler from a server (Judson, col. 5, line 50 – col. 6, line 11).

As per claim 20, Judson-TDB-Ching discloses the use of cached filler content (Judson, col. 5, lines 16-40).

As per claim 21, Judson-TDB-Ching discloses the use of filler content during latency experienced when downloading web pages (Judson, col. 5, line 50 – col. 6, line 11).

As per claim 22, Judson-TDB-Ching discloses the filler engine being an extension to the browser (Judson, col. 6, line 62 – col. 7, line 17).

As per claim 23, Judson-TDB-Ching discloses the filler engine as a component separate from the browser, embedded in the downloaded web page (Judson, col. 5, line 50 – col. 6, line

24).

As per claim 26, Judson-TDB-Ching discloses the filler engine responding to information

sent from the server to display filler objects (Judson, col. 5, line 50 – col. 6, line 24).

### (11)  *Response to Argument*

The Appellant argued in substance that  "[e]ven when combined, the references do not

teach or suggest the Appellant's claimed invention.

"For example, Judson merely describes that informational messages are always displayed

while the client is waiting for a reply, regardless of whether a sufficient delay occurs during the

accessing of data. The TDB teaches that web site URLs should be checked while the user is

reading a web page, not while the client is waiting for a reply to a previous request. Ching

estimates traffic rates for a number of different reasons...

Thus the references actually teach away from the Appellant's invention because they both

perform their specified actions without identifying a sufficient delay while the client is accessing

data..., and they do not customize the information to the user's taste. Indeed Judson always

assumes that there will be sufficient delay in the client accessing data that informational

messages can be displayed"

The Examiner believes the combination to teach the invention as claimed. Judson teaches

the invention substantially as claimed. Judson teaches using customized filler data while a web

page is being downloaded. The filler data is used to more efficiently use downtime, or the

"waiting" period between the request and the response, thereby increasing the value of the on-line session (see Judson, col. 1, lines 13 - col. 3, line 12 and col. 7, lines 26-44). The filler data is displayed between the time the download begins and when the download is complete (Judson col. 1, lines 34 – 55). If the downtime is sufficiently large, then enough time exists to display the filler data. On the other hand, if the downtime is very small, then there may not be enough time to display the filler data. Displaying the filler data when downtime is very small will defeat the purpose of the filler data and degrade the on-line session by delaying reception of the desired data and wasting system resources. Therefore, it would be beneficial to determine the length of downtime to selectively display the filler data. However, Judson does not specifically disclose the methods to determine the downtime. In the same field of endeavor, TDB and Ching teach methods to increase on-line session efficiency by determining the downtimes of network connections and taking measures to overcome the network delay. TDB teaches methods to enhance on-line sessions by determining the amount of delay associated with each URL connection. TDB, however, does not specifically disclose the details in determining a specific amount, or a sufficient amount of delay. The artisan of ordinary skill would have been led to the teachings of Ching which discloses the detailed methods to determine a sufficient amount of delay. It would have been obvious to one having ordinary skill in the art to have incorporated the preventative methods of TDB and Ching into the system of Judson for the purpose of increasing the efficiency in overcoming network delay problems.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Paul H Kang
Examiner
Art Unit 2152

Zarni Maung
Primary Examiner
Art Unit 2153

Conferee;
Le Luu
Primary Examiner
Art Unit 2152

April 6, 2001

GEORGE H GATES
GATES & COOPER
HOWARD HUGHES CENTER
6701 CENTER DRIVE WEST  SUITE 1050
LOS ANGELES, CA 90045